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Box Elder County v. Industrial Commission of Utah Unemployment Compensation Appeals Board, and Ellis v. Flint : Brief of Plaintiff

Utah Supreme Court

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IN THE SUPREME COURT

OF THE STATE OF UTAH

BOX ELDER COUNTY,

Plaintiff-
Appellant,

vs.

Case No. 17367

INDUSTRIAL COMMISSION OF UTAH
UNEMPLOYMENT COMPENSATION APPEALS
BOARD, AND ELLIS V. FLINT,

Defendants-
Respondents.

BRIEF OF PLAINTIFF

Petition for Review of the
Final Decision of the
Compensation Appeals Board of the
Utah State Industrial Commission

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IN THE SUPREME COURT

OF THE STATE OF UTAH

BOX ELDER COUNTY, Plaintiff and Appellant vs. INDUSTRIAL COMMISSION OF UTAH UNEMPLOYMENT COMPENSATION APPEALS BOARD, AND ELLIS V. FLINT, Defendants and Respondents	)	Case No. 17367

BRIEF OF PLAINTIFF,
BOX ELDER COUNTY

STATEMENT OF THE CASE

This is a petition seeking review of a final order of the Compensation Appeals Board of the Utah State Industrial Commission. Jurisdiction is vested in this court pursuant to Section 35-4-10 UCA (1953, as amended).

DISPOSITION IN THE LOWER COURT

Applicant Ellis V. Flint, upon his initial application for unemployment benefits, after leaving his employment with Box Elder County, was denied unemployment benefits on the basis that he voluntarily quit without good cause. He appealed that decision to an appeals referee; and the referee held that he had quit without good cause, and denied benefits. Mr. Flint then appealed to the Compensation Appeals Board, and the Board reversed the previous decision and granted unemployment benefits, finding that Mr. Flint did leave work with good cause. The plaintiff requested

the Board to reconsider its decision, and this request was den
Plaintiff then filed a petition seeking a writ of review; and t
Clerk of the Supreme Court issued the writ, causing the entire
record to be filed with the court.

RELIEF SOUGHT ON APPEAL

Plaintiffs seek an order reversing the decision of the Compensation Appeals Board and reinstating the decision of the appeals referee.

STATEMENT OF FACTS

Claimant, Flint, commenced employment with Box Elder County on April 1, 1979, (R., page 25), and voluntarily quit work on March 14, 1980, (R., page 33; R., pages 46 and 47; R., page 52 On April 29, 1980, he filed for unemployment benefits (R., page 53), and filled out a statement explaining why he had voluntaril quit (R., pages 50, 51, 52). Flint was denied benefits on May 20, 1980, (R., page 48), and on June 2, 1980, filed a letter wherein he requested a hearing by an Appeals Referee (R., pages 44, 45, 46, 47).

A question as to the timeliness of the appeal was raised by the Appeals Referee and resolved in favor of the claimant (R., pages 29, 30, 31, 32); and plaintiff does not dispute that decision. The hearing before the Appeals Referee was held on July 25, 1980, following notification of the claimant and the plaintiff; and Mr. Flint appeared representing himself. The plaintiff was represented by Don Chase, Chairman of the Box Elder County Commission (R., page 32). Although the plaintiff,

through its auditor, originally contended that the notification of the July 25th hearing went to the wrong person, (R., pages 10, 11), the plaintiff does not take that position on this appeal.

At the hearing, claimant stated that he had voluntarily quit (R., page 5) because of chest pains he suffered while working (R., page 36). His stated reason for the chest pains was what he called harrassment by the Box Elder County Auditor, Doris Olsen, (R., page 37). Flint stated that he was the only department head working for Box Elder County who was required to keep track of his time by the Box Elder County Auditor (R., page 35). He objected to keeping time cards on the basis that other department heads were not required to do so (R., page 35), and he refused to keep them (R., page 36).

Flint suffered a coronary in the Fall of 1978 for which he was hospitalized (R., page 37) and upon being released, was told to avoid strenuous work (R., page 37). At the time he suffered his coronary, Flint was the Democratic candidate for the position of Box Elder County Auditor, an election which he lost in November of 1978 to the current Box Elder County Auditor, Doris Olsen (R., page 34).

Don Chase, the County's representative at the hearing, testified that the County Auditor was requiring Mr. Flint to file more detailed reports of his time than were required of other department heads (R., page 40), and that Flint had mentioned that he was experiencing chest pains (R., page 41).

Chase also testified that he told Flint not to let it bother him (R., page 41), and also told him that the County Audi had no authority to fire him or take any punitive action against him for failure to file the time cards (R., page 41). Chase stated that he told Flint not to be bothered by the Auditor's activities, because only the Commission could fire him (R., page 41).

Flint was the only department head who traveled between other county departments and county agencies performing maintena work as needed, (R., page 5); and the County Auditor desired more detailed reports from him because his time had to be charged to various departments (R., page 40). Other department heads are required to file time cards (R., page 40).

Although Flint was seeing a physician regularly, he did not report his chest pains to the doctor, and was not advised by a physician to quit work (R., pages 33 and 34).

ARGUMENT

POINT I

THE RECORD CONTAINS NO EVIDENCE TO SUPPORT THE FINDINGS OF THE BOARD OF REVIEW THAT THE CLAIMANT QUIT WITH GOOD CAUSE.

The original decision of the Board of Review in this case is found at page 14 of the Record; and the pertinent statement made therein is contained in one sentence, as follows:

> "Because of the treatment being accorded to him by the employer, the claimant began experiencing angina."

The Appeals Referee found that the claimant voluntarily left work without good cause, stating as follows:

> "Although the claimant may have been unduly singled out to submit the report of his hours, compliance with that request would not have created a significant hardship on the claimant. His resistance to the request complicated the issue and undoubtedly caused increased hard feelings, both for the claimant and the Auditor. The claimant could, therefore, have reduced the tensions on the job by complying with the request of submitting the report. It is concluded that it was the claimant's resistance that caused his physical symptoms, rather than his actual job duties; and he could have reduced the threat to his health without quiting his job. He did not have a definite assurance at work at Hill Air Force Base at the time he quit." (R., page 26)

The claimant filed a copy of a letter from his doctor, dated August 5, 1980, which has become part of the record (page 19); which states as follows:

> "I have been the physician for Ellis Flint for the last seven years, and in November of 1978, he had an acute myocardial infarction. Since

that time, he has had intermittent chest pain which has occasionally been related to exercise and also has been related to episodes of emotional stress."

"I have been aware of pressures and stresses that the patient has had with respect to his work for some time and have monitored this over the past year. Recently, these stresses have increased and have been associated with an exacerbation of angina. It is my feeling that this is an extension of his underlying medical problem of documented coronary disease in the past. Had I been consulted with respect to this condition, it would have been my advice that Mr. Flint remove himself from the stressful situation which was precipitating his coronary disease. As I would have anticipated, his pain has stopped since he has been relieved of this."

As can be seen, the only medical evidence appearing anywhere in the record is the letter from Dr. Blanch, which obviously was submitted subsequent to the date of the hearing on July 25th. That letter points out that the cause of Mr. Flint's problems was emotional stress and pressures associated with his work; but, significantly, the doctor does not single out a factor which created the stress to begin with.

Plaintiff submits that the evidence adduced at the hearing, as contained in the transcript, shows that the claimant created his own stress by absolutely refusing to perform a simple timekeeping chore.

Furthermore, the claimant was made fully aware that the Box Elder County Auditor had no authority over him, as Don Chase testified:

> "I felt that really in our chain of command, so to speak, he was responsible to me; and there was, in my opinion, no reason for some of these things to be, you know, for him to be taking so much concern about them... ...Just let me explain what I'm saying here-- the chain of command. Actually, these people that he was having some problems with didn't have the authority or anything to fire him or anything of that nature. It had to come from the Commissioner. These are the things I was trying to explain to him. Just don't let those things bother you..." (R., page 41).

Also, the claimant was seeing a doctor regularly; but, by his own testimony, did not once report to the doctor that he was having any chest pains or that he was bothered by his problems at work until well after he quit. In response to the Referee's question at the hearing as to whether or not Mr. Flint had been advised by his physician to quit his job, Mr. Flint replied;

> "No, I didn't discuss this with my doctor; and I didn't really get into this the day that I came in here to quit." (R. page 34).

Although the defendant may very well have suffered chest pains in connection with his employment, and although he claims the pains led him to be concerned enough for his health to quit his work, on the other hand the chest pains were not serious enough for him to even mention them to a doctor, whom he was seeing on a regular basis.

The chest pains, according to the letter submitted by the claimant's physician, were caused by stress. The evidence in the record shows that the stress was caused not by the County Auditor's attempt to have Mr. Flint file time cards, but rather was caused in Mr. Flint's own mind because of the hard feelings

created by his refusal to fill in any sort of time card. Mr. Flint's own stubborness caused the stress which, in turn, caused whatever problem he experienced.

CONCLUSION

Plaintiff respectfully requests the court to reverse the decision of the Board of Review and reinstate the decision of the Appeal Referee on the basis that the evidence presented shows only that Mr. Flint created his own problems through his childish actions in refusing to meet an entirely reasonable requirement requested of him by the Box Elder County Auditor.

Dated this 3rd of December, 1980.

Jon J. Bunderson,
Assistant Box Elder County Attorney
Attorney for Plaintiff

MAILING CERTIFICATE

I hereby certify that I mailed two true and correct copies of the foregoing Petition For Review to: Mr. Floyd G. Astin and Mr. K. Allan Zabel, Special Assistants Attorney General, The Industrial Commission of Utah, Department of Employment Security, 174 Social Hall Avenue, Salt Lake City, Utah 84147, postage prepaid this 4th of December, 1980.

Secretary

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IN THE SUPREME COURT OF THE STATE OF UTAH

BOX ELDER COUNTY,

Plaintiff and Appellant,

vs. Case No. 17367

INDUSTRIAL COMMISSION OF UTAH
UNEMPLOYMENT COMPENSATION APPEALS
BOARD, and ELLIS V. FLINT,

Defendants and Respondents.

DEFENDANT'S BRIEF

STATEMENT OF NATURE OF THE CASE

This is an action before the Supreme Court of the State of Utah pursuant to Section 35-4-10(i), Utah Code Annotated 1953, as amended, for the purpose of judicial review of a decision of the Board of Review of the Industrial Commission of Utah, reversing the decision of the Appeal Referee, and allowing benefits to the claimant, Ellis V. Flint, on the grounds the claimant had left work voluntarily, but with good cause.

DISPOSITION BELOW

Defendant-Claimant Ellis V. Flint, upon his initial application for unemployment benefits, after leaving his employment with Box Elder County, was denied unemployment benefits by a Department Representative pursuant to Section 35-4-5(a), Utah Code Annotated 1953, as amended (Pocket Supplement, 1979), on the ground that he voluntarily quit without good cause. He appealed that decision to an Appeals Referee who affirmed the disqualification in a decision dated July 31, 1980. Mr. Flint then appealed to the Board of Review. The Board

reversed the decision of the Appeal Referee by a decision issued September 5, 1980, in Case No. 80-A-2109, 80-BR-245 and granted unemployment benefits, finding that Mr. Flint did leave work with good cause. The Plaintiff requested the Board to reconsider its decision. The request was denied in a decision issued September 30, 1980.

RELIEF SOUGHT ON APPEAL

Plaintiff seeks reversal of the decision of the Board of Review which allowed benefits to the claimants. Defendants seek affirmance of the decision of the Board of Review.

STATEMENT OF FACTS

Defendants, Board of Review, Department of Employment Security, and the Industrial Commission of Utah, substantially agree with the statement of facts set forth in Plaintiff's Brief, except in the following particulars, to wit:

In 1978, the claimant, Ellis V. Flint, ran as the Democratic candidate for the office of Box Elder County Auditor. In October, 1978, claimant suffered a serious heart attack and was hospitalized. Claimant lost the election to the current Box Elder County Auditor. Subsequently claimant was hired as Maintenance Supervisor by the Republican Chairman of the Box Elder County Commission, Mr. Don Chase, with the understanding that claimant would answer only to Mr. Chase, would not have to answer to any other county official and would run the maintenance department as he felt it should be run (R. pages 44, 45, and 53). Mr. Chase was Plaintiff's representative at the Appeal Referee's Hearing (R. page 32).

Mr. Flint voluntarily quit because of chest pains which he attributed to harassment by the Box Elder County Auditor (R. page 36). There were feelings over claimant's position and high pay relative to the elected officials. The animosity stemmed from the election (R. pages 39-41). There was no question about claimant putting in full time or sufficient time to accomplish his work (R. page 39). One of the reasons given for demanding more detailed time reports from the claimant was that such reports were necessary to make charges against other departments. However, other department heads that did work in other departments were not required to keep the detailed time reports that the County Auditor was demanding from the claimant, Mr. Flint (R. pages 35 and 40).

While the animosity over the time reports precipitated claimant's resignation, there were other incidents that contributed. As an example, the County Auditor complained to the Commission that claimant was wasting time and asked the sheriff to back up her complaints when in fact claimant was discussing county business during the time complained of (R. pages 36, 37, and 41).

Claimant did not discuss quitting his job with his doctor prior to quitting (R. page 34). However, his doctor was aware of pressures and stresses that the claimant had with respect to his work and had monitored the situation for the past year. Had claimant consulted him with respect to quitting his job the doctor would have advised claimant to quit. The doctor's letter was new evidence to the Board of Review that had not been available to the Department Representative or the Appeals Referee (R. page 19).

ARGUMENT

POINT I

THAT IN REVIEWING THE DETERMINATIONS OF THE INDUSTRIAL COMMISSION UNDER THE UTAH EMPLOYMENT SECURITY ACT THE COURT WILL AFFIRM THE FINDINGS OF THE BOARD OF REVIEW IF SUCH ARE SUSTAINED BY SUBSTANTIAL COMPETENT EVIDENCE.

The standard of review in unemployment insurance cases is well established.

Section 35-4-10(i), Utah Code Annotated, 1953, provided in part:

> In any judicial proceedings under this section the findings of the Commission and the Board of Review as to the facts if supported by evidence shall be conclusive and the jurisdiction of said Court shall be confined to questions of law.

This Court has consistently held that where the findings of the Commission and the Board of Review are supported by evidence, they will not be disturbed, *Martinez v. Board of Review*, 25 U. 2d 131, 477 P. 2d 587 (1970). In analyzing the above referenced review provision, this Court has stated:

"Under Section 35-4-10(i) the role of this Court is to sustain the determination of the Board of Review unless the record clearly and persuasively proves the action of the Board was arbitrary, capricious, and unreasonable. Specifically, as a matter of law, the determination was wrong; because only the opposite conclusion could be drawn from the facts." *Continental Oil Company v. Board of Review of the Industrial Commission of Utah,* (Utah, 1977) 568 P. 2d 727, 729.

POINT II

SECTION 35-4-5(a), UTAH CODE ANNOTATED 1953, AS AMENDED, IS INTENDED TO DISQUALIFY FROM THE RECEIPT OF UNEMPLOYMENT BENEFITS ONLY THOSE INDIVIDUALS WHO ARE UNEMPLOYED BY REASON OF THEIR OWN FAULT.

Section 35-4-5(a), Utah Code Annotated 1953, as amended, provides:

35-4-5 An individual shall be ineligible for benefits or for purposes of establishing a waiting period:

(a) For the week in which the claimant left work voluntarily without good cause, if so found by the commission, and for each week thereafter until the claimant has performed services in bona fide covered employment and earned wages for such services equal to at least six times the claimant's weekly benefit amount; provided, that no claimant shall be ineligible for benefits if the claimant leaves work under circumstances of such a nature that it would be contrary to equity and good conscience to impose a disqualification.

The commission shall in cooperation with the employer consider for the purposes of this act, the reasonableness of the claimant's actions, and the extent to which the actions evidence a genuine continuing attachment to the labor market in reaching a determination of whether the ineligibility of a claimant is contrary to equity and good conscience.

This Court has previously held that the purpose of the Employment Security Act is to assist a worker and his family in times when he is out of work *without fault on his part. Kennecott Copper Corporation Employees v. Department of Employment Security,* 13 U. 2d 262, 372 P.2d 987 (1962); and that the Department is to determine a claimant's eligibility for unemployment compensation by adhering to the volitional test. *Olaf Nelson Construction Company v. The Industrial Commission,* 121 U. 521, 243 P. 2d 951 (1952); *Mills v. Gronning,* (Utah, 1978) 581 P. 2d 1334.

However, a claimant voluntarily leaving work with good cause is in fact unemployed without fault. This Court explained the reason for the good cause exception in the following terms:

> "What is 'good cause' must reflect the underlying purpose of the Act to relieve against the distress of involuntary unemployment. The seeming paradox of allowing benefits to an individual whose unemployment is of his own volition disappears when the context of the words is viewed in that light. The legislature contemplated that when an individual voluntarily leaves a job under the pressure of circumstances which may reasonably be viewed as having compelled him to do so, the termination of his employment is involuntary for the purposes of the Act. In statutory contemplation he can not then reasonably be judged as free to stay at the job..." *Denby v. Board of Review of the Industrial Commission of Utah,* (Utah, 1977) 567 P. 2d 626, 630, quoting *Krauss v. Mr. Karagheusian, Inc.,* 13 N.J. 447, 100 A. 2d 27, 286 (1953).

The Court further explained "good cause" was limited to those instances where the unemployment was caused by external pressures so compelling a reasonably prudent person, exercising ordinary common sense and prudence, would be justified in quitting under similar circumstances. *Mills v. Gronning, SUPRA., Denby v. Board of Review of the Industrial Commission of Utah, SUPRA.; Stevenson Morgan,* 17 Or. App. 428,552 P. 2d 1204, 1206 (1974); *Wilton v. Employment Division,* 26 Or. App. 549, 553 P 2d 1071 (1976).

In the instant case the claimant voluntarily quit his employment, but under circumstances constituting good cause, as shall be more fully explained in Points III and IV hereof.

POINT III

THE BOARD OF REVIEW DID NOT ERR IN DETERMINING THAT CLAIMANT HEREIN HAD GOOD CAUSE FOR LEAVING WORK.

The initial determination of good cause for voluntarily leaving work is a mixed question of law and fact to be made by the administrative agency; the claimant has the burden of showing good cause; and he must indicate an effort to work out the problems unless he can demonstrate that such efforts would be futile. *Denby v. Board of Review of the Industrial Commission of Utah, SUPRA.*

Plaintiff's principle contention on appeal is that claimant created his own stress by absolutely refusing to perform a simple time keeping chore. (Plaintiff's Brief, p. 6). The claimant contended, however, that he was being required by the County Auditor, his former political rival, to complete more detailed time reports than required of other department heads; that the County Auditor complained unjustifiably to the County Commission that claimant was wasting time on the job; and that such forms of harassment caused the claimant to have a recurrence of chest pains and angina.

The findings of the Board of Review in favor of the claimant are supported throughout the record. First, with respect to the question of time reporting, Plaintiff's representative, Mr. Don Chase, who was also claimant's supervisor, testified that he discussed time keeping with claimant; that claimant "was very cooperative in reaching an educated estimation of how much of his time was spent in the..." various departments; "then after some time—after this was done was the time that these reports surfaced." (R. page 40).

> "...there are other department heads that do work...in other departments that are not required—and it was during this type of discussion that Mr. Flint decided that he was being asked to do things that other department heads were not being required to do and, at one time was told that other department heads were filing these reports—if my memory is correct. And I looked into the detail as to whether these other department heads were actually being required to file reports in that much detail and they were not... It's true that some of our department heads do file a time card...with the Auditor's department showing...their 80-hour time period and that's it. He did not object to having a time card the same as the rest of them. It was the detailing the time report—accounting for every minute of every day that the objection came over...and checking with other department heads, they were not required to account for where they were and what they were doing for the 8-hour period in detail every day. That is the crux of what, at least what I felt, the problem was. And it was in the back and forth of trying to handle the animosity that seemed to have grown clear back from...as far as the election..." (R. pages 40 and 41).

Second, with respect to claimant's contention of other harassment by the County Auditor, Mr. Chase's testifimony was to the effect:

> (a) that there were feelings over claimant's salary which was higher than any of the elected officials except possibly the County Attorney's (R. page 39).
>
> (b) that he never questioned that claimant put in a 40-hour week; that claimant was "very cooperative in putting in what time was necessary to get his job done;" that claimant put in more than a 40-hour week and was on call "365 days a year, 24 hours a day...he had to come when he was needed." (R. pages 39 and 40).

The claimant, Mr. Flint, also testified that the County Auditor spied upon him, and sought to have the County Sheriff back her up in a complaint against claimant to the commissioners (R. pages 36 and 37). While Flint's testimony of what the sheriff said is hearsay and, therefore, can't be accepted as proving the truth of what the Auditor said, nevertheless, the sheriff's telling it to Flint, whether true or not, served to increase the stress and feelings of animosity Flint felt toward his political opponent.

The claimant contended that the result of these difficulties with his former political rival was that he began to experience chest pains.

When asked by the Referee whether he had pains at any particular times or following any particular circumstances the claimant responded:

> "Yes. It was always after one of these. . . hassles. These problems that was coming from down there, was the only thing that would bring them on. . . and nothing else has caused me the problems. I haven't had any since. And so, myself, I know what was causing them and I corrected it." (R. pages 37 and 38).

The claimant further stated that although his supervisor, Mr. Chase, told him not to let it bother him, "...a lot of it you can and some of it, you can't. And I just got scared. I'm still here and I may have been if I'd stayed there, but I...it just wasn't worth it to me..." (R. page 38).

Plaintiff's representative, Mr. Chase, acknowledged that the claimant had mentioned his chest pains. He testified that claimant was responsible to him and there was no reason for claimant to be concerned about the detailed reports the Auditor was demanding. "But they did seem to bother him." (R. page 41). Mr. Chase also testified that he and claimant had sought for some period of time to work the problem out but acknowledged he had no control over the County Auditor because she was also an elected official. "...So, it's like having almost ten bosses at times." (R. page 41).

Claimant recognized that the problems at work were not resolvable and concluded he must quit because his doctor had advised him in regard to his coronary:

" '...I can't tell you what you can and can't do... As you work your way back to health...you're going to be able to tell what you can and can't do. *If anything starts to causing you shortness of breath, chest pains, discomfort, knock it off.*' " (R. page 37). (Emphasis added.)

In the face of such testimony Defendants submit that the Board of Review had ample grounds to find that the claimant was being required to make reports which were not required of other department heads. Because of the treatment being accorded to him by the employer, the claimant began experiencing angina. Under such circumstances it must be considered that the claimant left work with good cause.

POINT IV

CLAIMANT DID PROVIDE ADEQUATE AND TIMELY MEDICAL EVIDENCE TO ESTABLISH GOOD CAUSE FOR TERMINATING HIS EMPLOYMENT.

Plaintiff complains that "...the only medical evidence appearing anywhere in the record is the letter from Dr. Blanch, which obviously was submitted subsequent to the date of the hearing on July 25th..."

Section 35-4-10(d)(2), Utah Code Annotated 1953, as amended, provides:

> "... Upon appeal the Board of Review may on the basis of the evidence previously submitted in such case, or upon the basis of such additional evidence as it may direct be taken, affirm, modify or reverse the findings, conclusions and decisions of the Appeal Referee..."

The above-referenced statute obviously grants authority to the Board to consider additional evidence on appeal. Therefore, even though the letter from Dr. Blanch was submitted subsequent to the date of the hearing before the Appeal Referee, the Board did not exceed its statutory authority by considering the letter on appeal.

Plaintiff also complains that:

"...the claimant was seeing a doctor regularly; but, by his own testimony, did not once report to the doctor that he was having any chest pains or that he was bothered by his problems at work until well after he quit. In response to the Referee's question at the hearing as to whether or not Mr. Flint had been advised by his physician to quit his job, Mr. Flint replied: 'No, I didn't discuss this with my doctor; and I didn't really get into this the day that I came in here to quit.' (R. page 34)."

Defendants were unable to find any cases where this Court has previously considered the question of whether a claimant must be advised by his physician to quit his job. However, this question was considered by the Supreme Court of Pennsylvania in a frequently cited case, *Deiss v. Unemployment Compensation Board of Review*, 475 Pa. 547, 381 A. 2d 132 (1977).

In *Deiss SUPRA.*, 1 ALR 4th at 801, the Court held:

"We believe that...the relevant consideration is the claimant's health at the time of terminating employment. If a claimant realizes that either physically or emotionally he is unable to continue working and he offers competent testimony that at time of termination, adequate health reasons existed to justify termination, we can perceive no reason to require claimant to prove that he was advised to quit his job.

"In the instant case, appellant was under a psychotherapist's care for over a year before terminating his employment with Gordon. The psychotherapist testified that at the time of termination, appellant would have suffered a nervous breakdown had he continued his employment. This opinion was based on the results of over one year of analysis prior to appellant's termination of employment."

In this case, as in *Deiss*, the claimant realized that he was unable to continue working and offered competent evidence that at the time of termination, adequate health reasons existed to justify termination. That evidence was a letter from his doctor of seven years which stated in part:

"I have been aware of pressures and stresses that the patient has had with respect to his work for some time and have monitored this over the past year. Recently, these stresses have increased and have been associated with an exacerbation of angina. It is my feeling that this is an extension of his underlying medical problem of documented coronary disease in the past. Had I been consulted with respect to this condition, it would have been my advice that Mr. Flint remove himself from the stressful situation which was precipitating his coronary disease. As I would have anticipated, his pain has stopped since he has been relieved of this." (R. page 19)

His doctor substantiates claimant's own testimony that the stress from his job was exacerbating his health problem. He also indicates an awareness of those pressures and stresses the claimant was under and states he had been monitoring this over the past year. It is clear, therefore, that the correct interpretation of claimant's answer to the question, "Did your doctor advise you to quit your job?", where he answers, "No, I didn't discuss this with my doctor...," (R. page 34) is precisely what he said—he didn't discuss quitting his job with his doctor. Plaintiff's assertion that claimant "did not once report to the doctor that he was having chest pains or that he was bothered by his problems at work until well after he quit," is simply not supported by the record.

CCH Unemployment Insurance Reporter, Volume 10, Utah-General Rules of Adjudication, Para. 5507 K (2)(c) provides:

> "A worker who has left employment because of illness or disability, has the burden of establishing that the condition actually existed and that it was sufficient to cause him to leave work when he did."

Defendants submit claimant met that burden.

SUMMARY

The Record does contain evidence to support the findings of the Board of Review that the claimant quit work with good cause.

Claimant was doing his work to the full satisfaction of his immediate supervisor (R. pages 39-41). Nevertheless his political opponent to whom he lost an election was harassing him by making demands for reports that other department heads weren't required to make (R. pages 40 and 41) and by seeking the cooperation of the sheriff in complaining against him to the commission. Other harassment occurred weekly (R. page 41). He recognized he shouldn't let it bother him but it did (R. page 41). His supervisor also recognized that it was bothering him, but was unable to stop it (R. page 41). His doctor had advised him because of a coronary, to cease any activity that caused him chest pains, shortness of breath or discomfort (R. page 37).

Claimant realized that the harassment and problems at work were causing him the chest pains his doctor had warned him about. He feared this would bring on another coronary and quit (R. pages 37 and 38).

Plaintiff claims claimant created his own stress by refusing to submit to the demands of the Auditor. Defendant submits that the animosity claimant felt because of the harassment would not have disappeared by submitting. All the old antagonisms would have arisen anew within him with each submission of a detailed time report which the Plaintiff's own representative acknowledged no one else was required to submit.

CONCLUSION

The evidence in support of the decision of the Board of Review is both competent and substantial. The decisions allowing benefits to the claimant should, therefore, be affirmed.

Respectfully submitted this _____ day of January, 1981.

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BY: _____
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CERTIFICATE OF MAILING

I DO HEREBY CERTIFY that I mailed two copies of the foregoing Defendant's Brief to JON J. BUNDERSON, Attorney for Plaintiff-Appellant, 45 North First East, Brigham City, Utah 84302, this _____ day of January, 1981.

BY: _____
K. Allan Zabel